NOTICE: This is an electronic bench opinion which has not been verified as official.

In the Matter of	)	
	)	
WILLIAM R. HILL,	)	Date issued: June 21, 1996
	)	
Claimant,	)	Case No. 81-DCW-245
	)	
v.	)	OWCP No. 40-131336
	)	
WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY,	)	
	)	
Self-insured Employer.	)	
_____	)	

DECISION AND ORDER ON REMAND

Robert B. Adams, Esq.
Ashcraft & Gerel
4900 Seminary Road Ste 650
Alexandria, VA 22011

For the claimant.

Robert J.Strayhorne, Esq.
Friedlander, Misler, Friedlander, Sloan & Herz
1101 - 17th St. N.W., Ste. 700
Washington, D.C. 20036-4704

For the employer.

Before:

Christine McKenna
Administrative Law Judge

I. JURISDICTION AND PROCEDURAL HISTORY

This case arises under the provisions of the Longshore and Harborworkers' Compensation Act, as amended, 33 U.S.C. §901 et seq. that apply to workers' compensation claims within the District of Columbia. Mr. Hill seeks temporary partial disability benefits from December 13, 1978 [TR 5]. Mr. Hill originally alleged lumbosacral strain due to an accident on July 12, 1978 in which the bus he was driving was struck by a motorcycle police

officer while stopped at a stop sign.

Mr. Hill's claim has gone to hearing twice before Judge Peter Giesey, who denied benefits. Each denial has been appealed and remanded by the Benefits Review Board. It appears that Judge Giesey and the Board had different ideas about application of the Section 20(a) presumption under 33 U.S.C. §920(a), particularly as it concerns an alleged psychological component of the injury.

The case is before the undersigned administrative law judge on the Board's second order of remand, issued September 29, 1989. In that order, the Board took a very strong and detailed stand on what it felt the facts were, holding that the claimant had successfully established a prima facie case under Section 20(a), thereby shifting the burden to the employer to produce substantial evidence that his injury did not cause, aggravate, or contribute to his psychological condition. The Board remanded for the purpose of having Judge Giesey consider whether the employer had produced sufficient evidence to rebut the presumption, and cautioned the administrative law judge thus:

> We note the administrative law judge's disagreement with the Board's original opinion in this case. The administrative law judge is certainly free to state his objections to the Board's decision in his opinion on remand; however, he is advised to make the findings ordered by the Board in order to avoid another remand on the same issue.

Upon remand in September 1989, Judge Giesey queried the parties about whether the record should be reopened or supplemented, given that nearly nine years had passed since the original hearing. By order issued June 5, 1990, Judge Giesey reopened the record "for receipt of certain evidence which [the employer] wishes to adduce." Accordingly, discovery began to take place. On August 5, 1991, the evidence having been gathered and introduced, the employer and claimant requested a decision on the record, including the supplemental evidence.

However, as it turns out, the record before Judge Giesey was incomplete at that time, apparently (so he thought) because the file had not been transmitted intact by the Board upon its second remand. By order dated October 25, 1991, Judge Giesey returned the "partial record" to the Board for completion of the record and "such other and further proceedings as may be deemed advisable." Judge Giesey was absent from the office for several months thereafter, and upon his return reported to the parties that he could not locate any of the record (he may have forgotten that he had sent it back to the Board months earlier.)

In January 1993, the parties were informed that Judge Giesey had retired. With the assistance of the attorneys and the District Director, the file was reconstructed. The case was then assigned to another administrative law judge, Judge Marvin Bober, for a decision on the record. The employer submitted a brief under cover letter of September 7, 1993; no brief from claimant is located. It appears that settlement discussions ensued at that time, and every few months during 1994, the parties would contact Judge Bober to advise on the status. By letter dated September 7, 1994, employer's counsel advised Judge Bober that the claimant could not be located.

Judge Bober left this office in October 1994 and the case was assigned to the undersigned in August 1995. The parties assured the undersigned that Mr. Hill had been located. They also advised that settlement discussions were ongoing.

However, attempts at settlement have apparently failed, and on March 29, 1996 the parties, with the approval of the undersigned, entered into a stipulation to bifurcate the case on remand. Thus, the purpose of the instant order is to address first the questions on which the Board remanded in September 1989, that is, whether the employer has presented sufficient evidence to rebut the Section 20(a) presumption; and if so, whether causation has been established based on the record as a whole.

Thereafter, if it is my decision to award benefits, I shall determine whether and to what extent the parties will be permitted to develop the record further regarding the nature and extent of disability.

To the best of my knowledge, the record before me consists of CX 1-4, RX 1-21, ALJX 1-14, JX 1-4; two depositions of the claimant; Attachments 1-27 to the Employer's submission of September 7, 1993; and the transcript of proceedings before Judge Giesey September 21, 1981.

II. DISCUSSION: FINDINGS OF FACT AND CONCLUSIONS OF LAW

A. Review of the evidence

Mr. Hill was involved in the collision July 12, 1978 and was seen the next day by Dr. Hartsock. Dr. Hartsock found no fracture by x-ray, diagnosed lumbosacral strain, and advised physical therapy. He took the claimant off work for about three weeks, and returned

him to regular duties without restriction effective August 7, 1978. [RX 1].[1] The employer paid temporary total disability for that period [TR 4].

On referral from Dr. Hartsock, the claimant was seen by Dr. Robert Gordon, a board-certified orthopedic surgeon, on July 28, 1978 [JX 3, pp. 7 and 16]. He found the claimant's subjective complaints of pain and restriction inconsistent with and very much out of proportion to the objective findings. Giving him the benefit of the doubt, Dr. Gordon advised ten days of heat treatment and avoidance of strenuous activities to see whether he would improve. But, he cautioned, "If inconsistent findings are present then, I think we will have to tell him we feel he can return to work." RX 4

Mr. Hill returned to work August 7, 1978 and stayed on the job until December 13, 1978, when he was terminated for unsatisfactory conduct toward the public [TR 5, 52-53, 55, 68; RX 6][2]. He missed little to no work and received no further medical treatment [RX 2; TR 35, 46-47].[3] He testified, however, that he continued to experience back pain after returning to work, and had to take aspirin for relief [TR 19-21]; it is his view that he was forced to return to work [Hill dep. 2, p. 7].

At his attorney's request, the claimant was evaluated by Dr. Morris Schultz, an

---

1

The following designations are used herein: "RX ___" refers to the exhibits of the respondent employer; "CX ___" to the claimant's exhibits; "JX ___" to certain depositions entered jointly by the parties; and "TR ___" to the transcript of hearing before Judge Giesey September 21, 1981. Claimant's two depositions are unmarked, and are referred to by name, such as "Hill dep. 1 ___". ALJX ___" refers to the administrative law judge or procedural exhibits entered into this record since assignment to the undersigned administrative law judge. I note that numerous pieces of correspondence and interim orders are in the record created prior to assignment to the undersigned, without being identified in any way. I attempt wherever possible to identify documents discussed herein. I am also aware of the difficulties presented by the fact that the record may not be entirely complete, having made its way a number of times between this office and the Benefits Review Board. However, the parties seem confident that the file has been recreated accurately [see ALJXs 12 and 13, their stipulation to a decision on the record as it stands]. Their efforts in recreating the record are appreciated. And, finally, I note that it appears from the record that the deposition of claimant taken July 30, 1981 was admitted at hearing as RX 17 [TR 49-50], and that post-hearing the report of Dr. Haller was proffered as RX 17. In this Decision and Order, RX 17 refers to Dr. Haller's report, and "Hill dep. 1 ___" refers to the July 30, 1981 deposition.

2

Mr. Hill was terminated for similar reasons on September 23, 1975, and was reinstated May 17, 1976 after filing a union grievance, and (during subsequent interviews) committing to improved performance [RX 6; TR 38].

3

In his pre-hearing deposition, Mr. Hill claimed to have missed as much as two or three weeks of work during this time due to difficulties with his back and/or neck injury [Hill dep. 1, p. 19]. In his hearing testimony he thought it might have been only a few days, though he did not remember.

orthopedist, on March 8, 1979 [TR 34-35]. He told the doctor he had experienced a recurrence of back pain three or so weeks earlier. Dr. Schultz found the claimant histrionic, and felt that the patient's anxiety rendered the examination invalid [RX 2]. He told the claimant he could find nothing wrong with him, and as a result, the claimant did not return to him [TR 39].

On May 2, 1979, Mr. Hill filed a notice of injury, alleging a low back injury [RX 15].[4]

The claimant was examined by Marvin Gibson, also a board-certified orthopedist, on August 2, 1979 at his attorney's behest; Dr. Gibson treated the claimant for the next year [TR 34; JX 4, p. 4-5; Hill dep 1., p. 34]. X-rays were unremarkable. He diagnosed cervical and lumbar strain. Dr. Gibson prescribed medication and back exercises for one week. Three weeks later, the claimant was improved in that the medication had given "almost full relief." Dr. Gibson felt the claimant was able to return to light duty at that time. Over the ensuing weeks, he continued free of low back pain, and was experiencing some relief of the neck pain. In October the claimant reported that the back pain recurred, and Dr. Gibson wrote:

> This patient is unable to return to his pre-injury employment as a bus operator at this time.
>
> He is certainly able to return to light duty that does not call for repetitive bending or lifting of weights in excess of $25 pounds, and he needs to have the option of varying his positions from sitting to walking to standing at frequent intervals.

By November 1979 Dr. Gibson felt no further treatment was indicated and reiterated that claimant could return to light duty work. He opined "Patient has a 10% PPD of the body as a whole as a result of his work-incurred accident of July 1978." He encouraged the claimant to return to "some productive activity" because that would aid in his recovery, "more than anything else he could do." [JX 4, p. 7]

By March 1980, Dr. Gibson had concluded that the claimant had developed a chronic pain syndrome in the cervical and lumbosacral spine that would not respond to traditional medical or surgical treatment. [CX 1; RX 3]. He felt that his problem was coping, not

---

[4] Claimant's notice recited that the injury had occurred July 19, 1978 and that he had not worked since that date. However, the parties have stipulated and the claimant testified that his work with the employer ceased December 13, 1978 [TR 5, 20]. In addition, as discussed below, the record contains a number of conflicting statements by Mr. Hill about whether and when and where he worked after the accident [TR 26-32].

physical [JX 4, p. 9]. Dr. Gibson explained that "chronic pain syndrome" describes the reaction of emotionally unstable people to an injury that has subsided. It begins with a personality type, and is then reinforced by the panoply of individuals surrounding the person -- doctors, lawyers, nurses, the insurance company. The result is that the severity of the injury and treatment required are all magnified out of proportion to reality. He was unable to determine whether the claimant was malingering, that is, consciously promoting a magnified injury. However, he was clear that the patient had promoted the injury, whether consciously or not [JX 4, p. 10-13]. He felt the claimant could easily return to light duty, lifting no more than 30 pounds, and avoiding repetitive bending [JX 4, p. 16].

The employer has paid 50 percent temporary partial disability benefits since March 1980 [TR 4].

In the meantime, claimant had secured employment, and in fact had been working since January 1979 (I note that he was discharged by Metro December 13, 1978). He testified, however, that he did ***not*** engage in any gainful employment from December 1978 to January 1981 [Hill dep. 1, p. 23, 27-28].[5] Documentary evidence establishes that he worked at Red Coats, Inc. part-time from January 12 through March 23, 1979, on a three man crew stripping and waxing floors, using mops and buckets and a 180 pound buffing machine [JX 1, p. 5-6]. He worked as a security guard with Blackhawk Detective Agency, Inc., from October 31, 1979 to January 22, 1981 [RX 14]. He resumed work as a security guard in January 28, 1981 with Eagle Security where he remained employed until 1982 [CX 3, CX 4, Hill dep. 1, p. 28; Hill dep. 2, p. 12]. He left Eagle Security in 1982, having received a better offer as a security guard at the Park Lawn Building, where he was continuing to work a midnight shift when deposed in April 1991 [Hill dep. 2, p. 13-15]. In fact, in August 1990 he obtained a second job providing security for a Montgomery County middle school during the day [Id. Pp. 16-18]. Employment records establish that he has worked steadily and full-time since October 1979.

The claimant returned to Dr. Gordon in December 1980. Once again, there were no objective findings and "marked inconsistent findings on examination." According to Dr. Gordon, the importance of inconsistent findings is that it either verifies or disproves the veracity of a patient's subjective complaints [JX 3, p.14]. He felt there was no objective evidence of any musculoskeletal disability, and referred claimant for a neurologic work-up to determine if that conclusion was right. He found, in essence, that claimant's symptoms had no physiologic basis. Dr. Gordon testified that by that time, the claimant would have

---

5

He later amended that answer, claiming that he worked at Blackhawk Security for two or three months in 1980 [Hill dep. 1, p. 24-26]

been able to operate a bus [JX 3, p. 12]. On re-examination in August 1981, the patient was walking with an exaggerated, non-physiologic gait, and was "quite histrionic." [JX 3, p. 13] Dr. Gordon found "marked functional overlay," a term that denotes a non-physiologic reason for the complaint, due to either malingering or a psychologic reaction [RX 4; JX 3, p. 14-15, 25] Again, he felt at that time that the patient could have operated a bus.

The claimant was examined by Dr. Gerald D. Schuster on December 4, 1980. Dr. Schuster is a board certified orthopedic surgeon, specializing in cervical and lumbar spine surgery, as well as patients who have adjustment problems to traumatic injuries [JX 2, pp. 4 and 14]. In a report dated January 19, 1981, although Dr. Schuster noted no muscle spasm in the neck or lumbar areas, the claimant complained of tenderness with pressure in the lower cervical, lower dorsal, and L4-5 lumbosacral areas. He exhibited a 50% limitation in range of motion in the neck. Neurologic examination was normal. Dr. Schuster diagnosed "residual pain syndrome in the cervical area and in the lumbar region." He stated that the patient's problem appeared to be "directly related to the trauma he received in the injury of 1978"[6] and thought the patient was over-involved in his pain "to a significant degree that it is disturbing not only his rehabilitation from the work point of view, but also on a psychological basis." He recommended an EMG and further evaluation. He noted on x-ray some "incongruity of the apophyseal joints at the lumbosacral level" and his deposition explained that patients with this incongruity "are a setup to have pain problems in that region." [JX 2, pp. 9-10]. He also saw "transitional type vertebrae with unfused ribs" in which a patient is weaker from a structural point of view than one would expect with a normal bone pattern.

The import of Dr. Schuster's testimony was that the x-ray and clinical examination correlated with the patient's subjective complaints [JX 2, p. 11]. He felt that the claimant had reach maximum medical improvement, that he was not able to perform his work as a bus operator at that time, and would be limited in pushing, twisting, reaching, sitting, and withstanding the jostling of the bus [JX 2, p. 13-16]. He believed, however, that the claimant would be able to work as a station attendant, perform custodial services, manage apartment buildings, drive smaller trucks such as delivery trucks, and the like [JX 2, p. 24].

At his attorney's request, Mr. Hill was examined on July 22, 1981 by Dr. Lee Haller to determine whether he was suffering from any psychiatric difficulties and, if so, whether they were related to the July 1978 accident. Dr. Haller noted that the claimant presented a history that was difficult to follow. He also spent much of the time "talking about how he

---

[6] Dr. Schuster acknowledged that he was unaware of any second injury suffered by the claimant, and would not have been able to differentiate the cause of Mr. Hill's troubles from one injury or the other [JX 2, p. 20].

felt he had been mistreated by the bus company as a result of the back accident" and that he had been fired unjustifiably.[7] Dr. Haller did not perform a formal mental status examination because "this individual was known to be quite anxious." The doctor perceived a "rather diffuse paranoia that seems to include the bus company, his union, his first attorney, and some of the doctors he has seen." Dr. Haller's preliminary opinion was that the claimant "may well have had a personality disorder that antedated the accident and that he has suffered a deterioration in his coping mechanisms as a result of the accident and sequelae." He felt that the claimant needed further evaluation. [RX 17].

The employer's attorney arranged for a psychological evaluation, which was performed September 15, 1981 by Dr. Lorraine Brannon. Dr. Brannon noted that the claimant was resistant, in that he refused to answer her questions, and was also extremely hostile and angry. As had Dr. Haller, Dr. Brannon experienced difficulty following his story of the injury or injuries. He exhibited a great deal of resentment against the employer. He appeared unreasonable, illogical, rambling, and "so filled with rage that he is like a time bomb ready to explode." The claimant refused to undergo any psychological testing. Dr. Brannon concluded that the claimant was experiencing "psychological problems which existed prior to his accident in July, 1978 and as such are not traceable to the job-related injury." She did conclude, however, that the problems had been exacerbated by the injury and the subsequent series of events. [RX 20].

As stated above, when this case was resuscitated in 1990, the attorneys began to refresh and update the evidence. Claimant was deposed and testified that he was not receiving or anticipating any treatment for his back, although he saw a physician regarding his hypertension. In fact, he hadn't seen a doctor about his alleged physical problems since 1982 [Hill dep. 2, p. 26-27, 31].

The employer arranged for an evaluation by the previous treating physician, Dr. Gordon, who saw the claimant on July 2, 1990. The examination showed the same subjective complaints without an objective basis that Dr. Gordon had seen nine years before, and his opinion remained as it had been: that the claimant's problems were due to marked functional overlay and that he could return to work as a bus operator. [See Attachment 2 to Employer's submission of September 7, 1993].

He was also evaluated by Dr. Ramon Jenkins, a neurologist, July 13, 1990. As had

---

[7] The claimant testified that he feels he could not return to work for Metro because of "my neck, my back, and harassment." [TR 24]

others, Dr. Jenkins found the claimant's history to be so circumstantial and imprecise that it was "virtually impossible to obtain meaningful information." Even so, Dr. Jenkins took a history and also reviewed the past medical records. There were no abnormalities whatsoever on clinical examination. There was no sign of injury on x-ray of the lumbosacral spine. Dr. Jenkins found that the claimant exhibited "no physical finding of back, neck, or root disorder" although he did have a mild problem with the right knee (related to a previous accident in 1977). He felt that the claimant had reached maximum medical improvement "years ago" and that he had no permanent partial disability due to it. Further "his personality structure and behavioral problems are characterological and unrelated." [See Attachments 8 and 9 to Employer's submission of September 7, 1993].

The claimant was also evaluated by Dr. Brian Schulman, a board-certified psychiatrist, on July 18, 1990. As had others previously, Dr. Schulman saw his emotional demeanor as reticent, at least mildly angry, somewhat irritable, and resistant. However, on mental status examination, he was attentive, oriented, and logical, without evidence of depression, anxiety, or somatic preoccupation. He was suspicious and egocentric, in the sense that he felt he was being persecuted, but was not frankly paranoid or delusional. Dr. Schulman found no evidence of a psychiatric or personality disorder. He found no evidence from his examination and review of the medical records "that this individual suffered a mental or neuropsychiatric disorder secondary to the ... accident" nor was there any residual physical impairment. [See Attachment 10 to Employer's submission of September 7, 1993].

B. Evaluation of the causal connection.

It is well-settled that it is within the province of the fact-finder to determine the credibility of the witnesses, to weigh the evidence and draw her own inferences from it. Banks v. Chicago Grain Trimmers Assoc., Inc., 390 U.S. 459, 467, *reh. denied*, 391 U.S. 929 (1968); Smiley vs. Director, OWCP, 984 F.2d 278 (9th Cir. 1993).

1. Prima facie case.

To establish a prima facie case under the Act, the claimant need only allege that he suffered physical harm, and that an accident occurred in the course of employment which could have caused the harm. Kelaita v. Triple A Machine Shop, 13 BRBS 326, 330-31 (1981), *aff'd sub nom.*, Kelaita v. Director, OWCP, 799 F.2d 1308 (9th Cir. 1986). Claimant has met this burden. The Board has found the facts sufficient to support a prima facie case, thereby invoking the presumption under Section 20(a) that the injury was caused by work-related conditions. Section 20(a) provides in pertinent part:

> In any proceeding for the enforcement of a claim for compensation under this Act, it shall be presumed, in the absence of substantial evidence to the contrary --
>
> (a) That the claim comes within the provisions of the Act.

33 U.S.C. §920(a). Given the Board's very direct language in its second remand order, it is clear that this finding is not to be re-examined or disturbed. Accordingly, claimant has established a prima facie case for the purpose of invoking the presumption under Section 20 (a).

Once invoked, the effect of the Section 20(a) presumption is to shift the burden to the employer to establish either a subsequent intervening cause, or that the condition was not the natural and unavoidable result of the work injury. Kubin v. Pro-Football, Inc., ___, BRBS, BRB 92-0701 (September 27, 1995). In addition, the Act broadly defines the concept of injury, in that "injury" encompasses any work-related aggravation of a pre-existing condition: where an employment-related injury combines with, or contributes to, a pre-existing impairment or underlying condition, the entire resulting disability is compensable, and the relative contributions of the work-related injury and the pre-existing condition are not weighed to determine claimant's entitlement. Johnson v. Ingalls Shipbuilding, 22 BRBS 160, 162 (1989).

2. Whether the employer has successfully rebutted the presumption of a causal connection.

To rebut the Section 20 (a) presumption, the employer must produce substantial countervailing evidence severing the connection between the claimant's injury and working conditions. Holmes v. Universal Maritime Service Corp., 29 BRBS 18 (1995); James v. Pate Stevedoring Co., 22 BRBS 271, 273 (1989). Substantial evidence is the kind of evidence that a reasonable mind might accept as adequate to support a conclusion. Sprague v. Director, OWCP, 688 F.2d 862, 865 (1st Cir. 1982). Such evidence must be specific, direct, unequivocal and not speculative. For example, the board has held that the presumption is not rebutted where there is no direct, positive evidence presented in the record on behalf of the employer. Webb v. Corson & Gruman, 14 BRBS 444 (1981). Speculative testimony of a medical witness is not sufficient to rebut the presumption. Dixon v. John J. McMullen & Assocs., 13 BRBS 707 (1981).

On the other hand, negative evidence (attacking the claimant's case, particularly on credibility) may suffice where it is specific and comprehensive, and is more persuasive when presented in combination with medical evidence. Craig v. Maher Terminal, 11 BRBS 400

(1979); Swinton v Kelly, 554 F.2d 1075 (D.C.Cir. 1976), 4 BRBS 466, 477, *cert. denied* 429 U.S. 820 (1976)..

Turning now to the issues and evidence, there are three types of injury alleged: a low back problem, a neck problem, and a mental problem.

With respect to the neck claim, I find the presumption rebutted by the unequivocal opinion of Dr. Gibson [JX 4, p. 9], buttressed by the opinion of Dr. Jenkins. Dr. Gibson was adamant that the claimant's neck problem could not be connected to the bus accident, given that it first occurred ten months after the accident. Dearing v. Director, OWCP, 27 BRBS 72 (CRT) (4th Cir. 1993) (holding that the "unequivocal testimony of a physician that no relationship exists between a claimant's disabling condition and the claimant's employment is sufficient to rebut the presumption").[8] I note that although the claimant initially went to Dr. Gibson at his attorney's request, Dr. Gibson treated the claimant for over a year, and thus rendered his opinion from the perspective of a longitudinal familiarity with his patient. He is also a board-certified orthopedic surgeon, and thus well-qualified to render such an opinion.

With respect to the mental claim, I find the presumption rebutted by the unequivocal opinion of Dr. Schulman who found no injury, no disorder and no impairment as a result of the accident. I note that Dr. Jenkins agreed with this assessment as well..

With respect to the low back claim, I find no similar medical opinion evidence for the period immediately following the accident. Looking at the record as a whole, there is no direct evidence of a lack of causal connection between the collision and the three weeks of back pain and off-work time that followed. Drs. Hartsock and Gordon found nothing remarkable or alarming, yet both seem to have accepted the claimant's subjective complaints of pain and diagnosed lumbosacral pain. It may well be true that Dr. Gordon doubted the claimant's subjective complains, but he did prescribe ten days of heat treatment and sedentary activities. Neither of these doctors commented on the etiology of the alleged pain. I therefore conclude that with respect to the immediate effects of the accident, the presumption has not been rebutted. The claimant has therefore sustained his burden of proof

---

8

I note that a claimant's mere failure to complain about pain immediately following the accident is insufficient, by itself, to establish that an injury did not occur. Alexander v. Ryan-Walsh Stevedoring Co., 23 BRBS 185, 189 (1990). Here, however, claimant's failure to report a neck problem until months and months after the accident is coupled with the unequivocal statement of his treating physician that there is no connection, as well as the numerous other factors set forth herein that support the lack of a connection.

with respect to entitlement to total temporary disability benefits for the period July 12, 1978 through August 6, 1978, which the employer has already paid.

However, I find that the presumption has been rebutted with respect to the claim for temporary partial disability from December 13, 1978. This is because six pieces of evidence, taken together, establish that the low back problem had resolved long before claimant was fired and left Metro in December 1978. The combination of evidence shows first, that claimant returned to work as a bus operator August 7, 1978 and missed very little work; second, that he sought no medical treatment, for either a physical or mental problem, during the time he was working (in fact, he saw no doctor from July 1978 to March 1979 and saw Dr. Schultz in March 1979 not for treatment but because his attorney sent him); third, neither Dr. Hartsock nor Dr. Gordon found any objective basis for the low back pain and both sent him back to work in August 1978; fourth, Dr. Schultz found him able to work in March 1979; fifth, Drs. Hartsock, Gordon, Gibson and Schultz found nothing objective to explain the alleged pain, and both treating physicians strongly questioned the veracity of those complaints; sixth, the evidence is compelling that the claimant has not been truthful in his reports on facts that bear on whether he was working and able to work. Taken together, then, the presumption is rebutted as to the period following December 13, 1978.

3. Whether the evidence as a whole establishes a causal connection between the claimant's physical and emotional problems and the employer's work environment .

Where the causal connection is severed, the 20(a) presumption falls out of the case, and the issue of causation must be resolved on the whole body of proof. Brown v. Pacific Dry Dock, 22 BRBS 284 (1989); Parsons Corp. v. Director, OWCP (Gunter), 619 F.2d 38 (9th Cir. 1980). In this latter regard, the claimant retains the burden of proof on all elements of coverage and liability. Director, OWCP v. Greenwich Collieries, ___ U.S.___, 114 S.Ct 2251 (1994). As explained in greater detail below, I find that claimant's alleged back, neck and mental problems since December 13, 1978 are not the natural and unavoidable result of the work injury.

The evidence favoring the claimant boils down to his own testimony, the opinion of Dr. Schuster, Dr. Gibson's statement in November 1979, and the opinions of two mental health professionals, Drs. Haller and Brannon. The underlying commonality among all of these opinions is that, to a critical extent, they rely for their accuracy on the information provided by the claimant, and in this regard the evidence favorable to claimant is seriously flawed. It is clear, for example, that in rendering his opinion that claimant could not return to bus operator work, Dr. Gibson was relying on his patient's subjective complaints: there

simply was no objective evidence to support the limitations claimant reported. It is significant to me that some four or five months after his November 1979 opinion, Dr. Gibson concluded, apparently in some frustration, that the patient would simply not respond to treatment, not because he was physically injured or impaired, but because he was promoting a magnified injury. Dr. Gibson testified that this promotion could easily have been either conscious or unconscious, such that he could neither rule out malingering nor rule in a psychological disorder. These factors deflate the value of Dr. Gibson's opinion to claimant's case.

I find Dr. Schuster's opinion flawed for somewhat similar reasons. Dr. Schuster was also relying to a great extent on information supplied by the claimant. For example, he understood that the claimant had been unable to return to work and was not working at the time of the examination on December 4, 1980 [JX 2, p. 19]. This was simply untrue, a clear misrepresentation of the facts, in that Mr. Hill returned to work as a bus driver for several months after the accident; found another job almost immediately after being fired by Metro in December 1978; and in fact, at the time of the evaluation by Dr. Schuster, was working full-time for Blackhawk Detective Agency at that time, and had been for over a year. Dr. Schuster was unaware of a second injury suffered by the claimant, and acknowledged that he would not have been able to differentiate the cause of Mr. Hill's troubles from one injury to the other [JX 2, p. 20].

Yet, having rendered the opinion, Dr. Schuster was curiously unconcerned about the facts and how they might affect it, and he stuck to his opinion as though wedded to it. When deposed, Dr. Schuster said that his opinion that the claimant could not operate a bus was not affected at all by the fact -- he just learned -- that the claimant had actually returned to work operating a bus for the several month period following the accident. Indeed, his opinion would not be affected by whether the claimant was telling him the truth [JX 2, p. 26-28].

As a result, it is difficult to place much stock in Dr. Schuster's opinion. This is particularly so given that virtually the entire claim is base on subjective complaints of pain. If claimant's veracity about subjective complaints made little difference, one must wonder about the foundation of the doctor's opinion. Moreover, he saw the claimant only once and did not have the benefit of follow-up [as did Drs. Gibson and Gordon] or the evidence developed subsequently.

It is significant to me that two treating physicians (Gordon and Gibson), along with Dr. Schultz have strongly suggested the *possibility* that claimant is malingering. There is no direct opinion evidence that he is *probably* malingering. Yet, the testimony of Mr. Hill itself suggests as much. As many of the examiners reported, the claimant was far from forthright

in response to questioning. His history was said to be circumstantial, imprecise, illogical, rambling, and difficult to impossible to follow. The record before me reveals numerous instances where claimant has been caught lying about his work record during the time when he was claiming to various doctors that he was disabled. This strongly supports the notion that his reports of subjective complaints are untrue as well.

I find the evidence of Drs. Haller and Brannon well meaning but also uninformed. Because of claimant's recalcitrance, he refused to undergo objective testing by Dr. Brannon. Dr. Brannon suspected that this was because claimant feared he would be unable to manipulate the outcome of the test. Dr. Haller did not perform a formal mental status examination because of the anxiety with which the patient presented. They thus arrived at their conclusions without the essential tools by which mental health professionals make a reliable diagnosis: objective testing. Moreover, Dr. Haller termed his opinion preliminary and tentative; he said the claimant "may well have" a personality disorder and suffered a deterioration as a result of the accident. Dr. Haller said further evaluation was needed. The foundation on which their conclusions are based is thus impeached.

In contrast, Dr. Schulman did perform a formal mental status examination. Claimant demonstrated the same hostile demeanor described by Drs. Haller and Brannon. However, mental status examination showed him to be attentive, oriented, logical, without mood or somatic disorder. He was neither frankly paranoid or delusional. Dr. Schulman, as did Dr. Jenkins, concluded that the claimant had no disorder due to the accident. According to Dr. Jenkins, his behavioral problems were characterological.

That there is no causal connection between the accident in July 1978 and the anxiety, resistance, hostility and anger noted by the mental health professionals rings true under the circumstances of this case, for two very significant reasons. First, this claimant experienced personality troubles that resulted in his discharge long before the accident in July 1978. As noted above, he was discharged in September 1975 due to improper conduct toward the public. The accident occurred in July 1978, and he returned to work shortly. When he returned to work, he took his personality problems with him, and he was discharged again in December 1978 as a result of them. The discharge created enormous hostility to the employer. Yet it strongly suggests that the personality disorder that pre-existed the accident was neither exacerbated nor affected by the accident itself. The evidence suggests instead that Mr. Hill returned to work and simply carried on as he had before. I therefore place more credence in the opinion rendered by Dr. Schulman in that it is consistent with the record as a whole.

Second, while claimant alleges a disabling physical and mental condition, he has never sought treatment, since 1978, for either condition. The only time he has seen a

physician is at the instance of his attorneys. The failure to seek treatment in over eighteen years strongly suggests that these problems simply do not exist, and if they do, they are certainly not very troubling. Indeed, Mr. Hill has managed to work steadily for seventeen years, and now even works two jobs.

I therefore conclude that claimant has failed to sustain his burden of proving entitlement to temporary partial disability benefits from December 13, 1978 and continuing. He suffered at best a minor setback and stayed off work for three weeks during July and August 1978. Thereafter there was no impairment, physical or mental, attributable to work-related conditions.

III. CONCLUSION

For the foregoing reasons, it is **ORDERED** that the claim of William Hill be and is **DENIED**.

_____

Christine McKenna
Administrative Law Judge